UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

State of Oklahoma, et al., Plaintiffs, v. Tyson Foods, Inc., et al., Defendants.	05-CV-0329 GKF-SAJ

THE CARGILL DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION TO COMPEL

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	)	

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ARGUMENT

The Court should deny Plaintiffs' motion to compel responses to the overly broad, burdensome, and at-best marginally relevant discovery at issue here. The Federal Rules of Civil Procedure recognize the inevitable conflict between broad, unfettered discovery and the burden and expense that such discovery can impose on litigants. Rule 1 mandates that courts construe the Rules to "secure the just, speedy and *inexpensive* determination of every action" (emphasis added). Conversely, the Rules contemplate liberal discovery; the information sought only need be "reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1); Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978).

Courts resolve this inherent tension in the Rules by fashioning remedies that secure a just balance between opposing parties' interests. Rule 26(b)(1) gives courts "the authority to confine discovery to the claims and defenses asserted in the pleadings," and recognizes a court's discretion to tailor discovery depending on the particular circumstances of a case. Fed. R. Civ. P. 26(b)(1)

advisory committee note (2000). Particularly in the event of "sweeping or contentious discovery," like Plaintiffs' here, the Court may regulate the breadth of discovery. See id. In the present case, Cargill, Inc. ("Cargill") and Cargill Turkey Production, LLC ("CTP") (together, the "Cargill Defendants") have already provided to Plaintiffs a huge body of the documents that bear most closely on the claims raised by Plaintiffs' First Amended Complaint ("FAC"). The Court should reject Plaintiffs' efforts to coerce additional documents with at-most marginal relevance, documents whose production would impose substantial and unnecessary burden and expense on the Cargill Defendants.

A. Plaintiffs' Motion Omits Any Mention of Context Critical to the Issues It Raises.

As a threshold matter, Plaintiffs' motion omits the relevant context of the discovery requests at issue by ignoring the documents the Cargill Defendants have already produced, by failing to relate their arguments to any of their individual document requests, and by failing to adequately identify the purported basis for the claims they assert in the FAC.

First, Plaintiffs' motion virtually ignores the considerable material that the Cargill Defendants have already produced to Plaintiffs. Instead, the motion gives the impression that the Cargill Defendants have produced no documents dated before 2002, only parenthetically admitting that the Cargill Defendants have indeed produced their complete grower files—without any date limitation—concerning every independent grower the Cargill Defendants have identified as being located in the IRW and with whom a Cargill Defendant has contracted since 2002. (See Pls. Mot. Compel at 3, 5.) These grower files include (a) the Cargill Defendants' contracts with the growers, (b) amendments to those contracts, (c) chemical identification hazard communications, (d) communications with the growers regarding turkey placement, and (e) communications regarding grower payment. Based on

the allegations in Plaintiffs' FAC, such documents should logically be some of the most central evidence in the case, and Plaintiffs already have all the documents that the Cargill Defendants have relating to all those growers going back as far as those documents exist in the Cargill Defendants' files. In some instances, these documents extend back before the early 1990s.

Second, Plaintiffs' arguments are entirely undifferentiated and fail to focus in any meaningful way on the specifics of any of Plaintiffs' myriad document requests. Plaintiffs' motion explicitly asks the Court to rule as to each of the 250 document requests Plaintiffs served on the two Cargill Defendants, and even categorizes those requests in the motion's "Background" section. (See Pls. Mot. Compel at 2-3.) In their actual argument, however, Plaintiffs fail to quote, discuss, or even mention even a single specific request for production in the context of any of the Cargill Defendants' objections. Instead, Plaintiffs simply lump all of the requests together as if all the same arguments applied equally to all the requests. Of course, they do not.[1] Plaintiffs' requests vary widely in scope and subject, and Plaintiffs' "one size fits all" argument cannot and does not adequately address their diversity.

Third, Plaintiffs' own lack of forthrightness about the nature of their own claims imposes a serious impediment to the Court's and Defendants' evaluation of Plaintiffs' discovery requests, and thus of Plaintiffs' present motion. As the Court concluded in its February 26, 2007 Order granting

[1] To note just one example, two of Plaintiffs' requests ask for all documents "reflecting, referring to, or relating to" the legal relationship between the Cargill Defendants and their contract growers. (See Pls.' Doc. Requests 105, 106.) The Cargill Defendants objected to these requests, inter alia, because the requests sought "documents related to geographic areas outside the Illinois River Watershed." Plaintiffs' motion offers no explanation of why documents concerning Cargill's legal relationship with growers outside the IRW – growers whose conduct is not even at issue in the case – has any possible relevance to the issues raised here. Similar examples abound.

Tyson's motion to compel, Plaintiffs have not been sufficiently forthcoming in identifying the nature and basis of their broad claims of "pollution, damage to the environment and human health in an area up to 1,000,000 acres." (Order of Feb. 26, 2007 at 6: Docket No. 1063). Despite the Court's directions in that Order, however, Plaintiffs continue to balk at providing the specific information that would permit Defendants or the Court to understand exactly what Plaintiffs claim here. (See, e.g., Letter of Apr. 24, 2007 from to R. George to L. Bullock, attached as Ex. 1 to Affidavit of Dara D. Mann., Ex. 1) Until Plaintiffs provide at least basic information about the basis of their claims, neither the Cargill Defendants nor the Court can make a reasonable evaluation of what might be admissible evidence, and thus what discovery may be reasonably calculated to lead to such evidence. Because neither Plaintiffs' own discovery responses nor their present motion provides sufficient context about the nature and basis of their own claims, they cannot demonstrate what documents might be relevant to those claims, and cannot justify the broad discovery they seek.

B. The Court should Deny Plaintiffs' Request for Discovery Unlimited in Time.

The Court should reject Plaintiffs' effort to remove any and all time restrictions from all of their document requests. In essence, Plaintiffs argue that because (according to Plaintiffs) no statutes of limitations apply to the State, Plaintiffs are free to demand documents from absolutely any period of time without regard to their relative relevancy to the issues actually raised in the case. Although the Cargill Defendants recognize that in some instances statutes of limitations do not run against sovereigns acting in their sovereign capacity, Plaintiffs here allege a broad array of claims that seek to assert sovereign, quasi-sovereign, and private property rights. This complicated legal issue need not and cannot fairly be decided in the context of a discovery motion, and the Cargill Defendants do not understand Plaintiffs to be seeking such rulings here. Moreover, the parties have already fully briefed multiple dispositive motions arguing that the Counts at issue are not even properly part of

this case, and those motions await rulings by this Court.[2] Even assuming for the sake of argument that Plaintiffs could avoid the statute of limitations as to some of their claims, however, the temporally unlimited discovery they seek is still far beyond that permitted by the rules and by common sense.

1. Plaintiffs' requests lacking any reasonable time limitation are facially overbroad.

When relevancy is not readily apparent, the party seeking discovery has the burden to show the relevancy of the request. E.g., G.D. v. Monarch Plastic Surgery, P.A., 239 F.R.D. 641, 645 (D. Kan. 2007) (citations omitted). District courts within the Tenth Circuit have found, as recently as this month, that discovery requests not limited to any reasonable time period are facially overbroad. See, e.g., Moss v. Blue Cross & Blue Shield of Kan., Inc., 2007 U.S. Dist. LEXIS 25301 at *12-13 (D. Kan. Apr. 2, 2007) (upholding defendants' suggested time frame of five years for discovery where requests contained no time limit) (attached as Ex. 2 to Affidavit of Dara D. Mann, Ex. 1); Williams v. Sprint/United Mgmt. Co., 2006 U.S. Dist. LEXIS 69051, at *23 (D. Kan. Sept. 25, 2006) (upholding defendants' suggested time frame of 18 months where requests were not limited by time) (attached as Ex. 3 to Affidavit of Dara D. Mann, Ex.1). Thus, a party propounding discovery

[2] See Tyson Defs.' Mot. to Dismiss Counts 4, 5, 6 and 10 of First Am. Compl. Under Political Question Doctrine (Doc. No. 65); Tyson Defs.' Mot. to Dismiss Counts 4-10 of First Am. Compl. (Docket No. 66); Tyson Defs.' Mot to Dismiss Counts 4, 6, 7, 8, 9, & 10 of First Am. Compl. (Docket No. 67); Peterson Defs.' Mot. Dismiss (Docket No. 75); State of Ark.'s Mot. to Dismiss (Docket No. 500); Defs.' Mot. for J. on Pleadings in Light of N.M. v. Gen. Elec. (Docket No. 1004); Defs.' Mot. for J. as Matter of Law in Light of Pls.' Constitutional Violations (Docket No. 1064); Defs.' Mot for Partial J. as Matter of Law Based on Pls.' Lack of Standing (Docket No. 1076).

requests containing not limited to any time period bears the burden of proving relevancy.[3] Williams, 2006 U.S. Dist. LEXIS 69051, at *19. Finally, parties have the duty to respond to overly broad discovery requests to the extent they are not objectionable.[4] Cotracom Commodity Trading Co. v. Seaboard Corp., 189 F.R.D. 655, 666 (D. Kan. 1999).

Here, the Cargill Defendants have no objection to discovery with a chronological scope reasonable in light of the nature of Plaintiffs' claims and the particular document request at issue. Contrary to Plaintiffs' assertion that the Cargill Defendants "refused to produce any pre-2002 documents" (Pls.' Mot. Compel at 3), the Cargill Defendants recognize that certain discovery requests may justify reaching farther back in time. The Cargill Defendants picked the longest potentially applicable statute of limitations period as a default dividing point for limiting the production of discovery, inasmuch as such statutory limitations reflect legislative judgments that balance the pursuit of legitimate claims and the burden of defending stale claims. Recognizing that some requests may justify longer periods of inquiry, the Cargill Defendants asked Plaintiffs during the meet and confer process to identify specific requests among the total 250 posed that Plaintiffs believed justified delving deeper into the past. (See Affidavit of Dara D. Mann, Ex.1 - ¶ 8.) Plaintiffs have never responded to this request or offered any such individual justification. The Cargill Defendants thus can only infer that Plaintiffs take an all-or-nothing position, arguing in their

[3] Relatedly, no evidentiary support is required to show undue burden where requests are unduly burdensome or overbroad on their face. Aikens v. Deluxe Fin. Servs., 217 F.R.D. 533, 538-39 (D. Kan. 2003).

[4] Plaintiffs themselves recognize this fact later in their Motion to Compel, at page 5 and footnote 4, referencing the fact that the Cargill Defendants have turned over all files of post-2002 IRW contract growers, regardless of time.

present motion that every one of their 125 document requests posed separately to each Cargill Defendant warrants temporally unlimited discovery.

Neither Plaintiffs' FAC nor their motion to compel, however, offers any basis for inferring that conduct 50 years ago or even 20 years ago has any bearing on Plaintiffs' current claims for damages and injunctive relief. In another recent District of Kansas decision, the court limited the temporal scope of the plaintiffs' discovery where the plaintiffs failed to "identify any specific discovery request at issue in their attempt to extend the discovery period back" or clarify why discovery dating back seven years was "necessary," and where the "plaintiffs' rationale for extending all discovery back to January 2000 is not apparent." Apsley v. Boeing Co., 2007 U.S. Dist. LEXIS 5144, at *14-17 (D. Kan. Jan. 17, 2007) (attached as Ex. 4 to Affidavit of Dara D. Mann, Ex.1). The court emphasized that "the determination of an appropriate time span requires sufficient information and argument upon which the court can make an informed decision." Id. at *15. Similarly, in Williams, the district court denied the plaintiff's motion to compel discovery beyond 18 months where the discovery contained no time limitation and the plaintiff failed to provide the court with adequate guidance to determine the proper temporal scope of the requests. Williams, 2006 U.S. Dist. LEXIS 69051, at *23 (citing Cotracom, 189 F.R.D. at 666).

Here, Plaintiffs' document requests either contain no temporal limitations or without explanation seek documents dating back to 1952, and thus are facially overbroad. See Moss; 2007 U.S. Dist. LEXIS 25301 at *12-13; Williams, 2006 U.S. Dist. LEXIS 69051, at *23. Plaintiffs have not met their burden of specifically demonstrating the relevance of pre-2002 documents sought by each request on which they now move to compel. See G.D., 239 F.R.D. at 645; Williams, 2006 U.S. Dist. LEXIS 69051, at *19. Plaintiffs either cannot or will not identify which of the 250 document requests subject to their Motion requires an unlimited temporal scope, much less explain why. See

Apsley, 2007 U.S. Dist. LEXIS 5144, at *14-16. Hence, the Court should adopt the Cargill Defendants' reasonable suggestion of a default five-year limitation. See Moss, 2007 U.S. Dist. LEXIS 25301 at *12-13.

2. Plaintiffs' own discovery responses recognize the need for balancing timeframe and burden.

Plaintiffs' present argument is also inconsistent with the need for balance Plaintiffs themselves assert in their own responses to defendants' discovery. When the Cargill Defendants propounded discovery requests to Plaintiffs for the time period 1952 to present (specifically noting that they did so only because Plaintiffs had alleged that to be the appropriate discovery time frame), the State contended that this scope was "oppressive, overly broad, unduly burdensome and expensive to answer, especially to the extent [the requests] ask the date or year a legal entity with more than a hundred component agencies and thousands of employees first became 'aware' of the requested facts." (Pls.' Resp. Opp'n to Cargill Defs.' Mot. to Compel, Docket No. 1086, at 16.) In resisting this production, Plaintiffs asserted that "[t]he burden of researching the historical facts at multiple agencies for multiple constituents clearly outweighs the importance of the proposed discovery in resolving the issues." (Id. at 16, n.1.)[5]

Like Plaintiffs, the Cargill Defendants are also part of a large and complex organizational structure, with numerous affiliated companies encompassing approximately 90 business units. (See

[5] Similarly, just this week Plaintiffs served their responses to Defendants' Requests for Admission, objecting to all requests "because the[y] purport to require the State to admit or deny matters without any limitation in time, which makes them overly broad, oppressive, unduly burdensome and expensive to answer. Determining whether a particular act or event has ever occurred would needlessly and improperly burden the State." (Pls.' Resp. to RFA at 2-3, attached as Ex. 5 to Affidavit of Dara D. Mann) (emphasis in original). Notably, no request uses the word "ever."

Ex. 2, Affidavit of Steven Willardsen, ¶ 8.) The burdens that the Cargill Defendants note here are thus the same burdens on which Plaintiffs themselves base their objections.

With all of these factors in mind, and especially given the "sweeping" and "contentious" nature of Plaintiffs' discovery requests, this Court should regulate the breadth of Plaintiffs' discovery. See Fed. R. Civ. P. 26(b)(1) advisory committee note (2000). In that vein, the Court should balance the likelihood of discovering useful information against the significant burden imposed on the Cargill Defendants by the facially overbroad temporal scope of Plaintiffs' requests.

Given the far-flung allegations of the FAC and the Plaintiffs' inability or unwillingness to provide much needed specificity as to their claims, the Cargill Defendants have fulfilled their duty to respond to overly broad requests to the extent those requests were not objectionable. This Court should reject Plaintiffs' blanket complaint as to the Cargill Defendants' temporal limitation on production. Absent a showing of specific relevance beyond that period for a specific discovery request, the Court should accept the reasonable default time frame of five years for Plaintiffs' discovery.

C. The Court should Deny Plaintiffs' Request for Geographically Unlimited Discovery.

The Court should also reject Plaintiffs' effort to avoid any geographical limitations on any of their hundreds of document requests. This is particularly true in a situation such as this, where Plaintiffs are attempting to vindicate their limited local interests in a particular watershed by seeking geographically remote discovery from companies that operate not just on a country-wide but world-wide basis.

Indeed, the very Cargill document which Plaintiffs tout in support of their position acknowledges that Cargill has over 90 business units and over 1,000 facilities worldwide. (Pls' Mot.

Compel Ex. H at 6.) Plaintiffs try to use this document to suggest that, because Cargill maintains the expectation that each of its facilities – regardless of where located in the world – will make an effort to reduce its environmental footprint, the Court should permit Plaintiffs limitless discovery as to the Cargill Defendants' global operations. However, the statement that Plaintiffs quote to the Court appears in the context of Cargill's efforts to recycle solid waste at a citric acid plant in Brazil. (Id.) The Cargill Defendants respectfully submit that such a statement from such a remote context cannot reasonably justify the limitless discovery Plaintiffs seek.

1. Information relating to practices outside the IRW have little or no relevance.

Plaintiffs' sole argument in support of its 250 geographically unlimited document requests posits that the discovery is relevant under Plaintiffs' trespass and nuisance counts to the issue of the Cargill Defendants' notice and knowledge of the claimed effects of poultry waste disposal practices. (See Pls. Mot. Compel at 7-11.) Even setting aside the serious questions about the viability of those counts,[6] this attempt to justify the relevance of the documents fails for a number of reasons.

Most prominently, Plaintiffs' relevance argument is again inconsistent with Plaintiffs' own objections in refusing to respond to similar discovery posed by defendants. Specifically, in response to CTP's interrogatory seeking the timing and source of Plaintiffs' knowledge of the claimed effects

[6] These two counts—in which Plaintiffs allege that the defendants deliberately and intentionally contracted with growers to use poultry litter as fertilizer to contaminate the entire 1,000,000+ acre watershed—are among the weakest in the FAC, both factually and legally. Defendants have already brought multiple motions seeking the dismissal of these counts, motions that are fully briefed and awaiting the Court's decision. (See supra, footnote 2.)

of poultry operations, Plaintiffs asserted that the interrogatory was "irrelevant and not likely to lead to the discovery of admissible evidence."[7]

Plaintiffs' own objection certainly holds true with respect to the discovery Plaintiffs served on the Cargill Defendants. The documents Plaintiffs ask the Court to compel the Cargill Defendants to produce involve Cargill employees thousands of miles remote from the IRW on which Plaintiffs claims are based. Conditions, practices, laws and regulations, and a number of other circumstances differ around the country. Plaintiffs offer nothing beyond their own conjecture to suggest that knowledge or notice of one piece of information by one employee in one Cargill division in one location under one set of regulations and circumstances has any relevance to the knowledge of another employee in another Cargill division under a different set of regulations and circumstances hundreds or thousands of miles away. The standard of relevance for discovery is liberal, but it is not unlimited, and Plaintiffs here have not met their burden.

Indeed, this Court has previously reined in a similar attempt at overly broad discovery by Plaintiffs in this case. As the Court will recall, Plaintiffs sought and, when rebuffed, attempted to compel defendants to disclose defense documents developed in the earlier City of Tulsa case, a case that involved some claims similar to those Plaintiffs raise here with respect to the Eucha-Spavinaw

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[7] "Objections and Responses to Separate Defendant Cargill Turkey Production LLC's Amended First Set of Interrogatories and Request for Production Propounded to Plaintiffs," at 6 (served Dec. 11, 2006) (attached as Ex. 6 to Affidavit of Dara D. Mann.) CTP's Interrogatory No. 3 asked Plaintiffs when they first became aware that poultry operations in the watershed might be a potential source of the materials of which Plaintiffs complain in the FAC, and to identify the source of that knowledge. See id. at 5; see also Pls' Resp. Opp'n Cargill Defs.' Mot. Compel at 16, n.1 ("The burden of researching the historical facts at multiple agencies for multiple constituents clearly outweighs the importance of the proposed discovery in resolving the issues.").

Watershed. The Court looked carefully at the claimed relevance of the City of Tulsa documents and rejected Plaintiffs' arguments for their disclosure, stating:

> Although Plaintiffs do identify some surface similarities between the *City of Tulsa* action and the currently pending case, such similarities are not enough to require a *carte blanche* production of all documents from the *City of Tulsa* action. The two lawsuits involve two separate watersheds, different water bodies, and different poultry farms located on separate watersheds. Plaintiffs provide no explanation for seeking the depositions and documents in an action which dealt with a different watershed and different water bodies. The Court has considered the arguments of the parties as submitted in the briefs, and the Court has listened to hours of oral argument on different issues detailing the differences in the two watersheds. The Court concludes that the relevancy of the requested documents is not readily apparent on its face.

(Order of Feb. 26, 2007 at 3: Docket No. 932). Similarly here, Plaintiffs have provided no explanation for seeking documents concerning events remote from the IRW, and the relevancy of the request is not apparent on its face. Indeed, inasmuch as Plaintiffs could not demonstrate the relevance of information from the Eucha-Spavinaw Watershed (which is after all adjacent to the IRW), Plaintiffs understandably cannot establish the relevance of information from operations hundreds or thousands of miles away.

Plaintiffs' reliance on "similar accident" cases to suggest relevance (Pls' Mot. Compel at 8), likewise echoes the argument that Plaintiffs made—and this Court rejected—with respect to the City of Tulsa documents. (See Order of Oct. 4, 2006 at 5: Docket No. 932) (rejecting argument for relevance based on similar-defect product case). The problem is that Plaintiffs have offered no showing that specific documents are particularly relevant to what Plaintiffs allege occurred in the IRW. Plaintiffs' full page of quotations from the technical and popular press on the topic of agribusiness (see Pls' Mot. Compel at 8-9), does not come close to meeting this burden. The quotations provided are vague, general, and without context, and offer no suggestion that any other

specific watershed in which the Cargill Defendants may have operations is similar in any pertinent way to any feature of the Cargill Defendants' operations in the IRW.[8]

2. The Burden of Gathering Information Relating to Practices Outside the IRW Far Outweighs Any Marginal Relevance.

Even assuming for the sake of argument that documents relating to poultry operations outside the IRW had some possible relevance, that potential relevance is far outweighed by the burden and expense the Cargill Defendants would incur in seeking those documents. Cargill is an international company that operates in more than 66 countries around the world and employs approximately 153,000 people. (Ex. 2, Affidavit of Steven Willardsen ¶ 8.) CTP is a domestic company with live turkey operations in Arkansas, Missouri, Virginia, and Texas, and employs more than 4,000 people. (Id. ¶ 16, 18-21.) Out of all of these operations, the only live turkey production facilities owned or formerly owned by the Cargill Defendants located in the IRW are in their Springdale, Arkansas, complex (which includes the Springdale and Gentry, Arkansas, facilities). (Id. ¶ 22.) Further, the Springdale complex is the only complex that interacts directly with company breeders or contract growers in the IRW. (See id.)

To date, the Cargill Defendants have expended in excess of $1,000,000 solely attributable to their efforts to produce documents related to the Springdale complex that are responsive to Plaintiffs discovery requests. (Affidavit of Dara D. Mann, Ex.1 ¶ 5.) The Cargill Defendants estimate that, if required to produce information relating to other of their turkey production operations in the United States, they will incur expenses well in excess of $3,000,000. (Id. ¶¶ 6-7.) The Cargill Defendants

[8] Plaintiffs' footnoted reliance on various Defendants' "industry standards" and state-of-the-art defenses, (Pls' Mot. Compel at 10, n.8), does not alter the result here. Both industry standards and the state of the art are necessarily objective standards that do not depend upon the specific knowledge of any particular entity or defendant, as Plaintiffs' argument implies.

submit that the at-best marginal relevance of documents related to these non-IRW operations cannot justify putting the Cargill Defendants to this extraordinary burden and expense.

Moreover, in contrast to some of the other defendants in this action whose primary business is poultry, Cargill is a global corporation operating in a wide variety of food markets, including beef, pork, and turkey. (See Ex. 2 Affidavit of Steven Willardsen ¶¶ 8-9.) Cargill has numerous subsidiaries and divisions located all over the world, encompassing approximately 90 business units with more than 150,000 employees. (Id. ¶ 8.) Similarly, CTP has multiple live turkey production facilities scattered throughout the United States with thousands of employees. (Id. ¶¶ 16-21.) A request that seeks the needle of specific knowledge in this size bureaucratic haystack—whether corporate or governmental—is overly broad, oppressive, and unduly burdensome and expensive.

In sum, Plaintiffs have fallen far short of demonstrating any potential relevance of geographically remote documents that would be sufficient to justify the substantial burden to the Cargill Defendants of producing such documents. Permitting discovery into such remote documents would substantially broaden the scope of discovery in the case. The Court should reject Plaintiffs' attempts to impose geographically unlimited discovery requests on the Cargill Defendants, and should deny Plaintiffs' motion.

D. Other Grounds Peppered Throughout the Motion.

Throughout the briefing in support of the motion at hand, Plaintiffs insert various additional arguments without providing more than a superficial discussion, and without useful analysis. The Cargill Defendants address each such argument in turn.

1. Use of Omnibus Phrase "Reflecting, Referring, or Relating To."

In objecting to Plaintiffs' requests for all documents "reflecting, referring, or relating to" their 250 document requests, the Cargill Defendants simply brought to Plaintiffs' attention that it could

not comply with such a broad and over-reaching request because there is simply no way for any company of Defendants' size to certify that it has located each and every document that may "reflect, refer or relate to" a given subject. Plaintiffs' discovery requests seek expansive categories of documents including (for example) contracts with growers (Request No. 1), communications regarding raising birds (Request Nos. 78 and 79), and ownership of the birds (Requests 82 and 83). If taken literally, with regard to these document requests alone, the phrase would compel the production every scrap of paper generated by CTP (and formerly the Cargill Turkey Products business unit of Cargill, Inc.) inasmuch as its primary business is the production of turkeys through contracts with independent growers.

Courts in the Tenth Circuit have often held that discovery requests are unduly burdensome on their face if they use the term "relating to" or "regarding" with respect to a general category or group of documents. Moss, 2007 U.S. Dist. LEXIS 25301, at *10 (D. Kan. 2007) (quoting Aikens v. Deluxe Fin. Servs., 217 F.R.D. 533, 537-38 (D. Kan. 2003)). Plaintiffs note that the Cargill Defendants used the narrower phrase "relating to" in connection with certain specific document requests; however, although the Cargill Defendants believed Plaintiffs did not provide all responsive documents relating to those particular questions, the Cargill Defendants did not move to compel on that ground. Plaintiffs cannot justify an order to compel in the face of an appropriate objection to the omnibus phrase "reflecting, referring, or relating to." See Moss, 2007 U.S. Dist. LEXIS 25301, at *10; Aikens, 217 F.R.D. at 537-38.

2. Plain Meaning of "Effects / Impacts."

Here, Plaintiffs try to create a conflict where none exists. Plaintiffs argue that the Cargill Defendants have improperly objected to terms whose meanings are plain in the context of the requests, citing the term "effects / impacts." (Pls.' Mot. Compel at 11.) As counsel for the Cargill

Defendants advised Plaintiffs' counsel during the meet and confer process, the Cargill Defendants have already responded to all requests using this term based on the plain English meanings of the words. (See Affidavit of Dara D. Mann, Ex.1 - ¶ 8.) The Cargill Defendants merely objected to the extent that Plaintiffs may believe (as some of their counsel's comments have suggested) that the words somehow mean something more. An answering party need not "engage in mental gymnastics to determine what information may or may not be remotely responsive" to a request's wording. Moss, 2007 U.S. Dist. LEXIS 25301, at *10-11 (citing Aikens, 217 F.R.D. at 538)). Although the Cargill Defendants cannot read Plaintiffs' minds, they have done their best to respond to discovery using the term "effects / impacts" under the plain understanding of the words. There is no basis for an order compelling discovery in this respect.

3. Plain Meaning of "Use" Versus "Handling" of Poultry Waste.

Plaintiffs also contend that the Cargill Defendants wrongly objected to Plaintiffs' employment of the terms "use" of poultry waste and "handling" of poultry waste. (Pls.' Mot. Compel at 11.) The Cargill Defendants have no problem ascertaining the plain meaning of these words and indeed have already responded consistent with those meanings. (See Affidavit of Dara D. Mann, Ex.1 - ¶ 8.) The Cargill Defendants' objection arises from the confusion Plaintiffs have created by using these and other words – with essentially indistinguishable meanings in this context – in different Requests to ask what Plaintiffs appear to intend to be different questions. For example, Plaintiffs have interposed requests to the Cargill Defendants seeking documents relating to: management of poultry litter (Request Nos. 42-44); storage of poultry litter (Request Nos. 48-50); disposal of poultry litter (Request Nos. 51-53); transport of poultry litter (Request Nos. 54-56); and land application of poultry litter (Request Nos. 57-59).

In the context of these specific requests, the meaning of additional requests for documents related to "use" or "handling" of poultry litter is obscure at best. The Cargill Defendants are genuinely confused as to what Plaintiffs view to be the difference between the terms, and Plaintiffs have done nothing to clarify any such distinction in the meet-and-confer sessions. If Plaintiffs intend the terms "use" and "handling" to have different meanings and to be non-duplicative of their other requests, they should provide different definitions, and the Cargill Defendants will respond. If Plaintiffs do not intend the terms to have different meaning, the Cargill Defendants have already responded to the discovery to the best of their ability, and the motion is moot.

4. "Boilerplate" Objections

The Cargill Defendants fully understand that asserting blanket objections of overbreadth, burdensomeness, and irrelevancy are not – in and of themselves – sufficient bases for withholding discovery. See, e.g., Olson v. Kmart Corp., 175 F.R.D. 560, 565 (D. Kan. 1997) (citation omitted). The Cargill Defendants therefore have not withheld documents on any grounds without providing justification. As discussed above, the Cargill Defendants' objections regarding breadth, burden, and relevancy are detailed to include, for example, time and geographic limitations. No documents have been withheld on the sole basis of a boilerplate objection. Indeed, in their motion, Plaintiffs cite no requests that they claim the Cargill Defendants answered with an unsupported, blanket objection. (See Pls.' Mot. Compel at 11-12.) This aspect of Plaintiffs' motion is meaningless, and the Court should deny it.

5. Confidentiality Designations.

In footnote 2 of their brief, Plaintiffs suggest for the first time that the Cargill Defendants have "improperly designated documents" under the confidentiality order. (See Affidavit of Dara D. Mann, Ex.1 - ¶ 9.) This footnote is gratuitous and has no place in the present motion. First,

Plaintiffs themselves admit that they should "address this issue pursuant to the procedures of the confidentiality order" entered by this Court. (Pls.' Mot. Compel at 3, n.2; see also Order of Nov. 21, 2006: Docket No. 985.) Second, Plaintiffs have never before raised this with the Cargill Defendants, and it has not been the subject of any meet and confer. Third, Plaintiffs do not here, nor have they ever, identified to the Cargill Defendants any documents supposedly mis-designated as confidential.

Plaintiffs' apparent intention in this footnote is to skirt both this Court's confidentiality order requirements and the Federal and Local Rules' meet-and-confer requirements by poisoning the well against the Cargill Defendants through the ad hominem comment and then disavowing any present request for relief. The Court should reject Plaintiffs' inappropriate footnote 2.

6. Method of Production.

Footnote 3 of Plaintiffs' brief is also gratuitous and at best premature. Plaintiffs have never communicated to the Cargill Defendants any dissatisfaction about their method of document production, much less engaged in the required meet and confer on this issue. (See Affidavit of Dara D. Mann, Ex.1 - ¶ 9.) Moreover, Plaintiffs' account of the communications that did occur is inaccurate and incomplete. In producing their documents, the Cargill Defendants have made their productions as the documents were kept in the ordinary course of business. Because the Cargill Defendants have been courteous enough to also provide a cover letter identifying the categories of documents being served, Plaintiffs have apparently leapt to the inaccurate assumption that the Cargill Defendants elected to produce documents in the manner in which they correspond to Plaintiffs' discovery requests. To the extent that Plaintiffs now claim to be confused by the Cargill Defendants' method of production, that confusion could be easily addressed through a meet-and-confer session as contemplated by the Rules.

Finally, although the Federal Rules allow parties to produce documents in two different ways, there is no requirement that each and every document produced in the course of litigation be produced in the same way. See Fed. R. Civ. P. 34(b). Because the Cargill Defendants abided by their duty under the Rules to produce all documents a method permitted by the Rules, the Court should disregard Plaintiffs' footnote 3.

CONCLUSION

For the reasons set forth above, Defendants Cargill, Inc. and Cargill Turkey Production, LLC urge this Court to deny Plaintiffs' motion to compel.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 26 day of April, 2007, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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